United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

#74-1886

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DOCKET NO. 74-1886

MERCU-RAY INDUSTRIES, INC. AND
JAMES SCOTT KREAGER,

PLAINTIFFS

JAMES SCOTT KREAGER,

APPELLANT

-against-

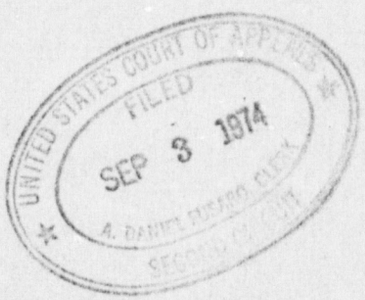
BRISTOL-MYERS COMPANY,
CLAIROL, INC.,
MICHEL S. SCHWARTZ,

DEFENDANT-APPELLEES

B

P/S

BRIEF OF APPELLANT



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I N T R O D U C T I O N

Plaintiffs Mercu_Ray and Kreager filed an anti-trust action against defendants Bristol-Myers & Clairol on July 23,1973 and filed an amended complaint on October 2,1973 adding Michel S. Schwartz as a defendant,among other things. The complaint,as amended, also spells out two claims of fraud and deceit.

On November 21,1973,Kreager filed a motion to change title of action to Kreager attaching a valid assignment of all rights in the instant action to Kreager. The assignment,patently valid,was uncontested on the validity;only the effectiveness whereby Duffy,d.j. by ORDER June 25,1974 refused to honor the effectiveness of the assignment for "policy reasons" stating Kreager must have counsel to represent the corporation. Whereby Duffy,D.J. granted motions to dismiss Counts I and II of the complaint. Duffy,J. also dismissed Counts III and IV stating "Kreager lcaked standing" and Count IV only stated conclusory allegations of fraud.
Duffy,J. P.4 Order states that validity of assignment not challenged;therefore will assume properly executed.Further "the law is well settled that a treble damage anti-trust claim can be assigned".

By the ORDER of Duffy,J. of June 25,1974,the District Court attempt to force a Corporation to obtain counsel and defend an action that owns no legal right to the action;furthermore said corportaion cannot afford counsel even if it owned the rights in the litigation.Duffy,J. PRETENDS THE ASSIGNMENT was made so Kreager could represent the corportaion. Why would Kreager want to represent a Corporation that owned no interest in the litigation.Clearly, Kreager was acting to represent himself as is his Constitutional right and privilege. While Duffy,J. failed to honor the effectiveness of the assignment, the Internal Revenue Service addressed a 14 paragraph letter to Kreager regarding the legal consequences of the assignment. In addition,the court

INTRODUCTION

recognizes the assignment of a treble-damage anti-trust action by stating "the law is well settled that a treble damage antitrust claim can be assigned", Duffy,P.4 ORDER .However, in the instant matter,for some unexplained reason, Kreager, in the eyes of the court is not afforded equality of the law and the decision made for "policy reasons",which even within itself is concerning.

Defendant Schwartz was served an amended complaint about October 2,1973 and failed to "answer". Kreager made motion for judgment against Schwartz. Duffy,J. failed to act on motion, held in abeyance until Duffy,j. dismissed the complaint on June 25,1974 and stated "all sundry motions are now mooted".

Duffy,J. also calls this case related to two other actions,one of which Duffy dismissed as res judicata , when the complaint spelled out facts and issues which occurred as late as 1973,while the trial judge in Mercu-Ray v.General Electric et al cut off testimony about 9/7/67 as stated in the complaint. While the second action claimed new violations that occurred after 9/7/67,the date the trial court cut off evidence,still Duffy ruled res judicata. Since this court of appeals ruled "NO MERIT" to Kreager's appeal, Kreager was "stuck" with this obvious "Bad Law" and now is pending before Supreme Court of the United States in petition for a writ of certiorari. It also was disturbing that Timbers,J. who ruled 'no error' of district court had about twenty years with law firms which did and still do represent several of the defendants including International Telephone & Telegraph Corporation, defendant Harold S. Geneen and others. In fact Timbers was with law firms of Davis, Polk, Wardwell, Sunderland & kiendl;Cummings & lockwood;& Skadden,Arps, Slate & Timbers AND all three firms are major anti-trust lawyers and corporate lawyers for the International Telephone & Telegrpah Corporation. Timbers,C.J. also had other major conflicts of interests ;however, handed down a decision replete with error and failed to disqualify himself or advise of conflict.

I N T R O D U C T I O N

The District Court refused to change the title in the instant action even when the Court of Appeals for the Second Circuit had already so ordered involving the same plaintiffs,namely, Mercu_Ray Industries, Inc. and James Scott Kreager.While the District Court pretends that the Court of Appeals decision is not binding because the appellees failed to contest "for reasons of their own",the district court failed to observe that the appellees did in fact so contest through the affidavit of Jules Yarnell sworn to 10,29,73 TITLED" Affidavit on behalf of appellees in opposition to motion of appellant to amend party plaintiff and for other relief". Then Duffy,J. IGNORES the fact that the exact identical circumstances were present;in Court of Appeals Mr. Kreager made motion to change title, the appelles contested, court ORDERED change of title and in ORDER stated appellees may contest validity or effectiveness.However, in District Court, in instant matter,Bristol-Myers contested ,like the appellees in Court of Appeals.Judge Duffy, unlike the Court of Appeals failed to change the title of the action (in both cases affidavits in opposition were filed) and then invite the defendants to contest if they so desired.

The court of appeals ruling is binding. To say ,in effect, that the appellees in Kreager vs; General Electric failing to contes affected the validity of the ORDER is like saying that an ORDER requiring a man to report within three days to serve a conviction sentence would be able to throw aside the ORDER of the court if he failed to show up.

The appellees in Kreager V. General Electric did not contest since they had already contested and was "turned down" wherefore,as they stated "for reasons of their own". Under Duffy's reasoning,any court order that stated without prejudice and the defendants failed to move would "void" the prior ORDER. Obviously Duffy had to rule on 'policy reasons' only as the law is to the contrary and Kreager v. General Electric" change of title in Court of Appeals was under identical circumstances and binding on District Court.

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I . THE DISTRICT COURT ERRED IN REFUSING TO CHANGE TITLE OF ACTION WHEN A PROPERLY EXECUTED ASSIGNMENT OF AN ANTITRUST CLAIM WAS EFFECTUATED

DUFFY,D.J. ORDER DATED JUNE 25,1974 ,PAGE 4 :

" THE VALIDITY OF THE ASSIGNMENT,i.e., THE FOLLOWING OF PROPER CORPORATE PROCEDURES AND THE GIVING OF CONSIDERATION IS NOT CHALLENGED BY THE DEFENDANTS AND,THEREFORE,FOR THE PURPOSE OF THESE MOTIONS I SHALL ASSUME THAT THE ASSIGNMENT WAS PROPERLY EXECUTED". EXHIBIT 21 "NOTICE OF MOTION TO CHANGE TITLE OF ACTION" DATED 11/17/73 ATTACHED A COPY OF THE STOCKHOLDERS MEETING OF NOVEMBER 15,1973 WHEREBY ASSIGNMENT WAS TECHNICALLY VALID AND BEFORE THE EYES OF THE COURT.

FURTHERMORE,"THE LAW IS WELL SETTLED THAT A TREBLE DAMAGE ANTITRUST CLAIM CAN BE ASSIGNED"--DUFFY,D.J. ORDER 6/25/74 PAGE 4. THIS IS PRECISELY THE ISSUE;ASSIGNMENT MADE 11/17/73 ;IN EXCESS OF SIX MONTHS PRIOR TO COURT REFUSING TO CHANGE TITLE OF ACTION,AS DUFFY OPINION STATED IN KAMP V. IN SPORTSWEAR,INC. 39 APP. DIV. 2d 869,332 NYS 2d 983 (1st Dept. 1972),IN REACHING THIS PER CURIAM DECISION THE APPELLATE DIVISION REVERSED JUDGMENT BELOW (70 MISC. 2d 898,335 N.Y.S. 2d 306) AND RELIED EXCLUSIVELY ON THE TWO PARAGRAPH DISSENT OF MR. JUSTICE LUPIANO WHICH STATES IN PART: "APART FROM THE FACT THAT THE AFFIDAVITS FAILED TO SUPPLY FACTS SUFFICIENT TO SUPPORT THE FINDINGS THAT THE ASSIGNMENTS WERE MADE TO CIRCUMVENT THE PROVISIONS OF THE CPLR 32 PREVENTING A CORPORATION FROM APPEARING IN PERSON, THE M O T I V E FOR THE ASSIGNMENT IS IMMATERIAL.(SCHWARTZ V. FLETCHER,238 APP. DIV. 554,557,265 N.Y.S. 277,281; BIRDSALL V. READ,188 APP. DIV. 46,176,N.Y.S. 369;MEISELS V. HARRIS, SUP. 136 NYS 2d 655;HOPPE V. RUSSO-ASIATIC BANK,200 APP.DIV. 460,193 N.Y.S.2d 250,aff'd. 235 N.Y. 37,138 N.E. 497;WAGNER V. BRAUNSBERG 5A.D. 2d 564,173 N.Y.S. 2d 525).

POINTS AND AUTHORITIES

POINT I : cont'd.:

THE ASSIGNMENTS, PATENTLY VALID,TRANSFERRED ALL OF THE INTERESTS OF THE ASSIGNOR TO THE PLAINTIFF AND HE THEREBY ACQUIRED THE RIGHT TO ENFORCE THE CLAIMS BY ACTION (GENERAL OBLIGATIONS LAW P. 13-105). NOR DOES PUBLIC POLICY REQUIRE US TO INVALIDATE THE ASSIGNMENTS.SIGNIFICANTLY,THE STATUE CPLR 321(a) DOES NOT EXTEND THE PROHIBITION AGAINST A CORPORATION APPEARING FOR ITSELF IN OUR COURTS TO AN ASSIGNEE (cfGENERAL CORPORATION LAW P. 218). THE OBJECTION TO A CORPORATION APPEARING IN PERSON IS THAT IT IS NOT A NATURAL PERSON AND MUST ACT THROUGH ITS AGENTS;THEREFORE, IN LEGAL MATTERS IT MUST ACT THROUGH LICENSED ATTORNEYS. BUT WHEN IT ASSIGNS ITS CAUSE OF ACTION TO A NATURAL PERSON,FOR WHATEVER REASON, THE STATUTE AUTHORIZES THE LATTER TO PROSECUTE THE ACTION IN PERSON".

DUFFY,J. ASSUMED THE ASSIGNMENT WAS IN ORDER THAT MR. KREAGER COULD REPRESENT THE CORPORATION ;HOWEVER, THE DISTRICT JUDGE FAILED TO INQUIRE INTO THE REASONS FOR THE TRANSFER WHICH WOULD HAVE DISCLOSED, AMONG OTHER THINGS, (a) THE INTERNAL REVENUE SERVICE HAD BEEN REQUESTED TO "RULE" ON THE EFFECTIVENESS TAX WISE OF RECOVERY IN THE ANTI-TRUST MATTERS. IN A THREE PAGE 14 PARAGRAPH REPLY FROM THE I.R.S. TO MR. KREAGER, THE ISSUES OF THE ASSIGNMENT TAKE NOTICE. (b) SINCE THE PATENT EXPIRED AUGUST 6,1974, THE DISSOLUTION OF THE CORPORATION WAS ALSO UNDER HEAVY CONSIDERATION; WHEREBY THE RULING OF THE DISTRICT COURT HAS IN EFFECT PREVENTED FURTHER POSSIBLE DISSOLVING OF THE CORPORATION SINCE IN EFFECT DUFFY,D.J. HAS RULED THAT THE CORPORATION MUST HIRE COUNSEL WHICH IT CANNOT AFFORD AND PROTECT AN ACTION IN WHICH IT OWNS NO LEGAL RIGHTS;WHEREBY A DIRECT INTERFERNECE IN THE RIGHTS OF BOTH MR. KREAGER AND THE CORPORATION TO DISSOLVE SAID CORPORATION IN THE YEAR 1974 IF DESIRED FOR TAX PURPOSES. CLEARLY, THE ASSIGNMENT WAS TECHNICALLY VALID AND THE COURT ERRED IN DISTINGUISHING BETWEEN MR. KREAGER AND SCORES OF OTHERS WHOSE ASSIGNMENTS WERE HONORED BY THE COURTS.

POINTS AND AUTHORITIES:

I I : THE DISTRICT COURT ERRED IN DISTINGUISHING BETWEEN THE PRIOR ASSIGNMENT BY THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT IN APPEAL NO. 73-1987 JAMES SCOTT KREAGER VS: GENERAL ELECTRIC COMPANY ET AL

DUFFY,D.J. CONFUSED THE INSTANT CASE WITH #73-1987 IN COURT OF APPEALS. PAGES 3-4 OF DECISION OF DUFFY,J. DATED JUNE 25,1974 ,COURT STATES: THE RELEVANT PORTION OF THE DISPUTED ORDER PROVIDES:

"IT IS HEREBY ORDERED THAT THE MOTION MADE HEREIN BY JAMES SCOTT KREAGER PRO SE TO AMEND THE PARTY APPELLANT IN THIS(73-1987) ACTION AND CHANGE THE TITLE TO JAMES SCOTT KREAGER V. GENERAL ELECTRIC COMPANY ET AL,BE AND IT HEREBY IS GRANTED PURSUANT TO FED. R. APP. P. 43, WITHOUT PREJUDICE TO APPELLEES' RIGHTS TO CONTEST THE VALIDITY OR EFFECTIVENESS OF THE ALLEGED ASSIGNMENT."...(EMPHASIS ADDED) .

DUFFY FURTHER ERRS AND STATES " NONE OF THE APPELLEES DID CONTEST IT "FOR REASONS OF THEIR OWN". AFFIDAVIT OF E. INSELBUCH,P.2(NOV. 30,1973). CLEARLY, THIS IS WHERE THE COURT WENT ASTRAY BY RELYING ON THIS AFFIDAVIT BY THE GENERAL ELECTRIC COMPANY INSERTED INTO THIS ACTION WITH INTENT TO ATTEMPT TO DEFEAT PLAINTIFF'S ACTION.

AS A MATTER OF FACT--THE APPELLEES DID IN FACT CONTEST THE VALIDITY OF THE ASSIGNMENT;IN FACT T E N OF THE 20 DEFENDANTS SO CONTESTED BY AFFIDAVIT OF ONE JULES E. YARNELL SWORN TO ON THE 29th DAY OF OCTOBER,1973 IN A THREE PAGE AFFIDAVIT :PARAGRAPH TWO STATES " I (JULES YARNELL) SUBMIT THIS AFFIDAVIT IN OPPOSITION TO THE PRO se MOTION BY THE CORPORATE APPELLANT REQUESTING PERMISSION TO AMEND THE PARTY PLAINTIFF IN THE ABOVE NAMED ACTION FROM MERCU-RAY INDUSTRIES, INC. TO JAMES SCOTT KREAGER(EMPHASIS ADDED).

POINTS AND AUTHORITIES

I I I : THE DISTRICT COURT ERRED IN COMPARING THE INSTANT ASSIGNMENT WITH BIGGS V. SCHWALGE 341 ILL. APP. 268,N.E. 87(1st DIST. 1950);AND /OR OTHER CASES

DUFFY,D.J. P. 6 ORDER 6/25/74 SHOWED A RECKLESS DISREGARD FOR THE FACTS AS WELL AS THE LAW BY STATING "A CASE BASED ON NEARLY IDENTICAL FACTS" IN COMPARING THE INSTANT CASE WITH THE BIGGS V. SCHWALGE CASE.

SINCE THE DISTRICT JUDGE HAD FIRST HAND KNOWLEDGE OF THE SUBSTANTIAL DIFFERENCES AS A RESULT OF THE COURT'S OWN DECISIONS,THE INSERTION OF SUCH A STATEMENT APPEARS TO BE AN ABUSE OF POWER AND A RECKLESS DISREGARD OF THE FACTS AND LAW.

IN BIGGS CASE:

1. KNOWINGLY TOOK ASSIGNMENT FOR PURPOSE OF INDULGING IN DESIRE TO PRACTICE LAW;
2. COURT (a) FIRST URGED ;AND (b) FINALLY ORDERED BIGGS TO EMPLOY AN ATTORNEY
3. BIGGS REFUSED TO COMPLY WITH THE COURT'S ORDER ;EVEN BRAGGED ABOUT HIS LAW LIBRARY;
4. TRANSFERRED RIGHTS FOR $1.00 AND OTHER CONSIDERATIONS
5. OBVIOUS FROM BIGGS BRIEF THAT HE ATTEMPTED TO ACT FOR THE CORPORATION

N O W , C O M P A R E W I T H I N S T A N T M A T T E R :

1. MERCU-RAY INDUSTRIES, INC, HELD A STOCKHOLDERS MEETING,CALLED IN 500 SHARES OF STOCK FROM MR. KREAGER FOR WHICH MR. KREAGER PURCHASED THE RIGHTS TO THE INSTANT LITIGATION;SAID TRANSACTION WAS A FORMALLY EXECUTED DOCUMENT WITH CORPORATE SEAL AND AS DUFFY,D.J. P. 4 STATES: "THA LAW IS WELL SETTLED THAT A TREBLE DAMAGE ANTITRUST CLAIM CAN BE ASSIGNED".

POINTS AND AUTHORITIES

III-cont'd.:

2. WHILE IN BIGGS CASE, COURT URGED AND FINALLY ORDERED BIGGS TO EMPLOY COUNSEL; IN INSTANT MATTER, CORPORATION OF ITS OWN WILL HIRED COUNSEL;HOWEVER, IT WAS THE DISTRICT COURT ITSELF THAT (a) PERMITTED WITHDRAWAL WITHOUT A PROPER HEARING;(b) WITHDRAWAL WAS STRONGLY OPPOSED BY MR. KREAGER EVEN TO POINT OF FILING "CONTEMPT OF COURT" MOTION WHICH ALSO THE COURT DISMISSED WITHOUT EVEN DEMANDING THE APPEARANCE OF THE CORPORATE ATTORNEYS; (c) DISTRICT JUDGE ,BY PERMITTING WITHDRAWAL OF COUNSEL, SET THE STAGE SO THE DEFENDANTS CLAIROL AND BRISTOL-MYERS COULD AGAIN MOVE TO DISMISS BECAUSE CORPORATION WAS WITHOUT COUNSEL; (d) COURT REFUSED TO TRANSFER TO ANOTHER CIRCUIT WHERE PLAINTIFF CORPORATION MAY HAVE BEEN ABLE TO HIRE COUNSEL ON A CONTINGENCY FEE ARRANGEMENT; (e) MR. KREAGER'S EFFORTS TO OBTAIN COUNSEL IS WELL DOCUMENTED IN THIS COURT AS WELL AS THE DISTRICT COURT AND PRESIDENTS OF BAR ASSOCIATIONS, AMONG OTHERS, HAVE DESCRIBED IT NEARLY IMPOSSIBLE TO HIRE COMPETENT COUNSEL FOR AN ANTI-TRUST ACTION WITHOUT MONIES FOR A SUBSTANTIAL RETAINER; (f) NEITHER MR. KREAGER NOR THE CORPORATION HAD SUFFICIENT MONIES TO RETAIN COUNSEL AND THIS FACT WAS WELL KNOWN TO THE COURT; (g) IN RECORD ON APPEAL NOS. 24-25, MR. KREAGER SPECIFICALLY ASKED THE COURT FOR TIME TO ATTEMPT TO OBTAIN COUNSEL IF THE MOTION TO CHANGE THE TITLE OF THE ACTION WAS DENIED; HOWEVER, THE COURT HELD THE MOTION TO CHANGE THE TITLE IN ABEYANCE FROM 11/21/73 TO JUNE 25,1974 AT WHICH TIME THE COURT NOT ONLY REFUSED TO CHANGE TITLE;BUT REFUSED TO GRANT CORPORATION ANY TIME TO ATTEMPT TO OBTAIN COUNSEL;CLEARLY,UNTIL"CHANGE OF TITLE" MOTION WAS DETERMINED BY THE COURT,PLAINTIFF CORPORATION COULD NOT OBTAIN COUNSEL AS IF TITLE CHANGE GRANTED, THE CORPORATION WOULD NOT BE IN NEED OF COUNSEL;ONLY AFTER THE REFUSAL OF THE MOTION TO CHANGE THE TITLE DID THE CORPORATION NEED TO BE GRANTED TIME TO COMPLY WITH THE COURTS RULING THEREBY THE CORPORATION WOULD HAVE BEEN PLAINTIFF.

POINTS AND AUTHORITIES:

III-cont'd.

D'IPPOLITO V. VITIES SERVICE CO. 374 F.2d 643,647 ;2d CIR. 1967 P.643 1.

COURTS 406.9(6): CITED BY DUFFY,D.J. STATES AS FOLLOWS,

COURT OF APPEALS CANNOT AFFIRM DISMISSAL,FOR FAILURE TO STATE CLAIM UPON WHICH RELIEF CAN BE GRANTED,IF UNDER ANY REASONABLE READING OF THE COMPLAINT STATES CLAIM UPON WHICH RELIEF CAN BE GRANTED,ESPECIALLY IN PRIVATE ANTI-TRUST ACTIONS WHICH IS IMBUED WITH PUBLIC INTEREST AND IS THEREFORE FAVORED.
THIS APPLIES IN PARTICULAR TO DUFFY,J. DISMISSING COUNTS III AND IV OF COMPLAINT.

HICKS V. BEKINS MOVING & STORAGE CO. 87 FED. 583(9th CIR. 1937)P. 585(4):
THE COURT REJECTED THE APPELLEES CONTENTION THAT THE COMPLAINT STATED FACTS NOT SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION.
IN THE INSTANT MATTER, THE AMENDED COMPLAINT (INDEX #9-RECORD ON APPEAL) CLEARLY STATES ISSUES AND FACTS THAT MUST BE DETERMINED BY A JURY.ALSO IN HICKS CASE THE COURT AT (1) DISTINGUISHED BETWEEN ACTION TO RECOVER DAMAGES UNDER ANTI-TRUST ACT IS NOT AN ACTION TO RECOVER A PENALTY.

IN THE INSTANT MATTER, AS IN HICKS CASE, THE COMBINATION AND CONSPIRACY AND THE ACTS DONE IN PURSUANCE THEREOF ARE SET FORTH WITH DEFINITENESS AND CERTAINTY. APPELLANT WAS NOT REQUIRED TO PLEAD EVIDENTIARY MATTERS OR TO SET OUT HIS COMPLAINT WITH A DETAILED DESCRIPTION OF THE ALLEGED CONSPIRACY.MITCHELL WOODBURY CORP. V. ALBERT PICK BARTH CO., (C.C.A. 1) 41 F.2d 148,150; BALLARD OIL TERMINAL CORP. V. MEXICAN PETROLEUM (C.C.A. 1 28 F. (2d) 91,98.

UNITED COPPER SECURITIES CO. V. AMALGAMATED CO. 232 F. 574,577-78 (2 CIR. 1916)
AT PAGE 577 PAR. 1--"THE PERSON INJURED MUST BE--AFFECTED BY THE CONSPIRACY COMPLAINED OF".

AT (6-8) DEALS WITH THE ASSIGNMENT AND SO PERMITS SAME. AT P. 578
"WE COME TO THE CONCLUSION WILLINGLY".

POINTS AND AUTHORITIES

III cont'd.

ISIDOR WEINSTEIN INVESTMENT CO. V. HEARST CORP. 303 F. SUPP. 646,649 (N.D.CAL. 1969) P. 647 3 - A S S I G N M E N T S: TREBLE DAMAGE ANTI-TRUST CLAIMS ARE ASSIGNABLE.

HEISKELL V. MOZIE,82 F. 2d 861 863(D.C.CIR. 1936)-DUFFY,D.J. ALREADY POIMTED OUT HEISKELL CASE SHOWED AGENCY;NOT AN ASSIGNMENT AND WAS NOT THE REAL PARTY IN INTEREST.PAGE 863 STATES IT MEANS THE PARTIES IN INTEREST IN A CASE AND NOT AGENTS AND ATTRONEYS.

KAMP V. IN SPORTSWEAR,INC. 39 APP. DIV. 2d 869,332 NYS 2d 983(1st DEPT. 1972) THE COURT OF APPEALS RULED :IF ASSIGNMENT TECHNICALLY VALID;THE MOTIVE UNDERLYING WAS IMMATERIAL". IN INSTANT MATTER, IF MOTIVE WAS IMPORTANT TO THE COURT,THEN THE COURT HAD THE DUTY AND OBLIGATION TO INQUIRE REASONS AND MOTIVES AND NOT SPECULATE OR HYPOTHECIZE.

P O I N T S A N D A U T H O R I T I E S

I V . : THE DISTRICT COURT ERRED IN DISMISSING COUNT III OF THE COMPLAINT ON CONTENTION THAT MR. KREAGER HAS NO RIGHTS TO ASSERT THESE INDIRECT PRIVATE CLAIMS:

AMENDED COMPLAINT (RECORD ON APPEAL #9) AND PLAINTIFF'S ANSWER TO DEFENDANTS MOTION TO DISMISS (RECORD ON APPEAL #25) DOCUMENT THE FACT THAT THE COURT ERRED IN ASSERTING THAT MR. KREAGER HAD NO RIGHTS;FURTHERMORE THE COURT'S REFERENCE TO CLAIMS AS INDIRECT IS TOTAL ERROR AND MISLEADING.

AMENDED COMPLAINT PAGE 11-COUNT III,MR. KREAGER REPEATS AND REALLEGES THE ALLEGATIONS #1-25 INCLUSIVE OF THE AMENDED COMPLAINT:
(a) VIOLATION OF ANTI-TRUST LAWS;(b) UNLAWFUL COMBINATION AND CONAPIRACY TO RESTRAIN TRADE;(c)MONOPOLIZE AND ATTEMPT TO MONOPOLIZE; (d) SUPPRESS AND ELIMINATE MR. KREAGER AS A COMPETITOR;(e)CONSPIRED TO INTENTIONALLY FALSIFY DATA;(f) CONSPIRED TO FALSIFY TESTIMONY; (g) DESTROYED VITAL RECORDS WITH INTENT TO INJURE KREAGER;
(h) PAR. 34_AMENDED COMPLAINT:ESTOPPED MR. KREAGER FROM CONDUCTING RESEARCH AND FURTHER RESEARCH INTO SCORES OF RELATED AS WELL AS UNRELATED PRODUCTS;(i) ASSISTED OTHERS IN FALSIFYING TESTIMONY; (j) PREVENED KREAGER FROM SELLING AND PROFITING FROM SALES AND DISTRIBUTION OF SCORES OF PRODUCTS;(k) PREVENTED MR. KREAGER FROM FORMING A CONGLOMERATE OF COMPANIES;(1) PAGAGRAPH 8 ALONE CONTAINS A SERIES OF ISSUES REGARDING MR. KREAGER'S PERSONAL CLAIMS WHICH MUST BE DETERMINED BY A JURY, THE TRUE TRIER OF FACT;(m) PAR. 35

STATES FURTHER DAMAGE TO MR. KREAGER; (n) AS IN DEPOSITION OF DEFENDANT SCHWARTZ P.51. 9-13IN PRIOR TESTIMONY: "I (SCHWARTZ) WAS VERY INTERESTED IN THE DISPLAY--TO REPRESENT W H A T E V E R

POINTS AND AUTHORITIES:

IV-cont'd.:

C O M P A N Y HE (KREAGER) WAS FORMING TO MANUFACTURE THIS,TO MY CLIENTS, AND OTHERS (o) PAR. 36-FALSE TESTIMONY CONTRIVED BY THE DEFENDANTS; (p) PAR. 37 CLEARLY STATES "PLAINTIFF, KREAGER,FURTHER REALLEGES EACH AND ALL OF THE ALLEGATIONS CONTAINED IN PARAGRAPHS NUMBERED 1-25 INCLUSIVE OF COUNT I OF THIS COMPLAINT AS PERSONALLY DAMAGING KREAGER;(q) PAR. 38 SPELLS OUT OTHER PRODUCTS AND COMPANIES MR. KREAGER WOULD HAVE CONTROLLED AS EVEN DEFENDANT SCHWARTZ ADMITTED MR. KREAGER WAS FORMING OTHER COMPANIES: AND AS IN MATTER OF BRUCE'S JUICES V. AMERICAN CAN 87 FED. SUPP. 985, aff'd. 187 FED. (2d) 919,APPEAL DISMISSED 342 US 875 , MR. KREAGER WAS ENTITLED TO BE PUT IN THE POSITION THAT HE WOULD HAVE BEEN IN IF THE CONSPIRACY HAD NOT TAKEN PLACE;(r) OTHER ISSUES OF FACT TOO NUMEROUS TO MENTION.

IN THE INSTANT ACTION DAMAGES FLOW FROM THE CONSPIRACY OF THE DEFENDANTS WHICH OCCURRED IN YEARS 1968 THROUGH 1973 WHILE IN THE MATTER OF MERCU-RAY VS: GENERAL ELECTRIC ET AL (APPEAL NOS. 73-1987) DAMAGES WERE CUT OFF BY TRIAL JUDGE AS DATE COMPLAINT STATED CONSPIRACY TOOK PLACE WHICH WAS ENDED ABOUT 9/7/67 AND UNDER NO CIRCUMSTANCE COULD DAMAGES RELATING TO FACTS AND ISSUES IN A CONSPIRACY THAT TOOK PLACE IN 1973 HAVE BEEN LITIGATED IN A TRIAL THAT CUT-OFF ALL TESTIMONY AS OF OR ABOUT 9/7/67.

BOOKOUT V. SCHINE THEATRES,INC. 253 F.2d 292 (2dCIR. 1958)

4. CORPORATIONS PAR. 202--"A SHAREHOLDER MAY SUE FOR INJURY TO HIS SHARES BECAUSE OF CONDUCT THAT IS ALSO AN INJURY TO THE CORPORATION.HOWEVER, IN THE INSTANT MATTER, MR. KREAGER CLEARLY CLAIMS INJURIES SUFFERED ASIDE AND APART FROM THE CORPORATION(SEE PAR. 34 OF THE COMPLAINT AS AMENDED)--

IV-cont'd.

"PREVENTED FROM FURTHER RESEARCH INTO SCORES OF RELATED AND UNRELATED PRODUCTS AND PROFITING FROM THE SALES AND DISTRIBUTION OF SCORES OF PRODUCTS AS WELL AS PREVENTING MR. KREAGER FROM FORMING A CONGLOMERATE OF COMPANIES WHICH HAVE N O T HAVE BEEN RELATED TO MERCU-RAY.

PAR. 35-AMENDED COMPLAINT FURTHER ASSERTS--"MONIES WHICH WOULD HAVE ACCUMULATED FROM THE CONGLOMERATE OF COMPANIES WHICH MR. KREAGER WOULD HAVE CONTROLLED IN ADDITION TO THE CORPORATE PLAINTIFF,MERCU-RAY.

PAR. 36 AMENDED COMPLAINT- "AS A RESULT OF FALSE TESTIMONY CONTRIVED BY THE DEFENDANTS HEREIN IS CURRENTLY UNABLE TO DEVOTE HIS (KREAGER'S) TIME AND ENERGIES TO NEW PRODUCTS

PAR. 38-AMENDED COMPLAINT STATES AS A RESULT OF THE UNLAWFUL COMBINATION, MR. KREAGER HAS SUFFERED DAMAGES--FROM THE LOSSES OF OTHER COMPANIES (UNRELATED TO MERCU-RAY) THAT MR. KREAGER WOULD HAVE FORMED ,AND CONTINUING.

BOOKOUT V. SCHINE P. 294 (3) PLAINTIFF ALLEGES ADDITIONAL CLAIM, QUITE ASIDE FROM ANY LOSS AS A SHAREHOLDER FROM THE INJURY CAUSED TO THE CORPOATION---THIS IS PRECISLEY THE ISSUES IN THE INSTANT MATTER WHERE MR. KREAGER'S CLAIMS ARE DISTINGUISHED AND APART FROM THE CORPORATE CLAIM AS NOTED ABOVE. THE COURT NOTED IN THE BOOKOUT V. SCHINE CASE THAT THE POSITION ASSERTED WAS INDEFINITE AND THE COURT WAS NOT QUITE SURE OF THE BASIS;WHICH IS AT COMPLETE CONTRAST WITH THE INSTANT MATTER WHERE MR. KREAGER SPELLS OUT IN DEFINITE TERMAS THE BASIS OF THE CLAIMS AND ISSUES AND FACTS.

COLUMBIA LAW REVIEW P.588"THE COURTS SHOULD,HOWEVER, AVOID SUMMARY DISMISSAL ON PROVERBIAL GROUNDS.-THE PLAINTIFF IS THE INNOCENT PARTY;

IV-cont'd.:

THAT HE(PLAINTIFF) SHOULD SUFFER TO SPARE THE WRONGDOER IS HIGHLY QUESTIONABLE". "ANTI-TRUST ENFORCEMENT SHOULD NOT BE STRICTLY CONFINED MERELY TO LIGHTEN THE JUDICIAL LOAD". EMPHASIS ADDED. FROM STANDING TO SUE FOR TREBLE DAMAGES UNDER SECTION 4 OF THE CLAYTON ACT, 64 COLUM. L. REV. 570-581-588(1964).

DUFFY,D.J. P. 9 O R D E R 6/25/74 : JUDGE TIMBERS SPECIFICALLY CONSIDERED THE QUESTION OF MR. KREAGER'S STANDING TO ASSERT THE INDIVIDUAL PRIVATE ANTITRUST CLAIMS AND CONCLUDED--"KREAGER LACKED STANDING TO BRING A PRIVATE ANTI-TRUST ACTION TO RECOVER FOR DAMAGES ALLEGEDLY SUSTAINED BY HIS CORPORATION". Id at 3463.

WHILE THE RULING OF JUDGE TIMBERS IS CURRENTLY PENDING BEFORE THE SUPREME COURT IN A PETITION FOR A WRIT OF CERTIORARI NO. 73-6827 JAMES SCOTT KREAGER,PETITIONER VS. GENERAL ELECTRIC COMPANY ET AL , IT SEEMS ELEMENTARY TO SAY THE LEAST THAT JUDGE TIMBERS RULED "NO ERROR" ON THE PART OF JUDGE DUFFY WHO HAD RULED "RES JUDICATA" WHEN THE COMPLAINT BEFORE JUDGE DUFFY SPELLED OUT FACTS AND ISSUES OCCURRING IN YEARS 1968 THROUGH 1973;WHILE THE TRIAL COURT CUT OFF ALL TESTIMONY AS OF 9/7/67. CERTAINLY,"BAD LAW" IS PRESENT ON THE SURFACE.
IT IS DISTURBING THAT JUDGE TIMBERS ,AND TWO OTHER JUDGES, WROTE AN OPINION WHERE INTERNATIONAL TELEPHONE & TELEGRPAH CORPORATION AND HAROLD GENEEN WERE DEFENDANTS AND JUDGE TIMBERS FOR ABOUT TWENTY YEARS WAS DIRECTLY ASSOCIATED WITH LAW FIRMS REPRESENTING ITT . LAW FIRMS OF DAVIS,POLK,WARDWELL,SUNDERLAND KIENDL;ALSO CUMMINGS & LOCKWOOB; ALSO MEMBER OF SKADDEN,ARPS, SLATE & TIMBERS AND NOT ONE; BUT ALL T H R E E LAW FIRMS DO IN FACT REPRESENT ITT IN ANTI-TRUST ACTIONS AS well AS CORPORATE WORK IN ADDITION.

IV-cont'd.:

IN ADDITION, JUDGE TIMBERS, FORMERLY CHIEF LAWYER OF SECURITIES AND EXCHANGE COMMISSION WHILE ITT'S TRIAL ATTORNEY,ERNEST S. MEYERS ALSO WAS A FORMER SPECIAL ASSISTANT UNITED STATES ATTORNEY GENERAL AS CHIEF CONSENT DECREE SEC. ANTI-TRUST DIVISION;OF COURSE BOTH JUDGES DUFFY AND TIMBERS ARE RECENT APPOINTEES OF THE NIXON ADMINISTRATION WHICH IS CHARGED WITH A DIRECT OBSTRUCTION OF JUSTICE IN THE CASES. THE FACT THAT JUDGE TIMBERS NOT ONLY FAILED TO DISQUALIFY HIMSELF;BUT EVEN CONCELAED HIS MOST SUBSTANTIAL CONFLICT OF INTEREST HAS NOT YET BEEN LAID TO REST.

ALSO J. EDWARD LUMBARD,JR. FAILED TO DISQUALIFY HIMSELF AND ALSO FAILED TO STATE HIS SUBSTANTIAL CONFLICT ALSO.JUDGE LUMBARD HAILS FROM GENERAL ELECTRIC'S ANTI-TRUST FIRM OF DONOVAN,LEISURE,NEWTON, LUMBARD & IRVINE,ESQS. AND ALSO ATTORNEY FOR GENERAL ELECTRIC WHO ARGUED BEFORE THE COURT OF APPEALS,NAMELY PHIL E. GILBERT, JR. ALSO HAILED FROM DONOVAN & LEISURE. ALL THREE JUDGES RESIDE IN CONNECTICUT AND HAVE OFFICES IN CONNECTICUT ,THE STATE WHERE GENERAL ELECTRIC EVEN MOVES HER EXECUTIVE OFFICES.

IN THE DISTRICT COURT, JUDGE BONSAL ANNOUNCED HIS CONFLICT OF INTEREST AND ASKED MR. KREAGER'S PERMISSION TO RULE ON "SUMMARY JUDGMENT";ALSO JUDGE McLEAN DISQUALIFIED HIMSLEF AFTER ANNOUNCING SUBSTANTIAL INTERESTS IN THE GENERAL ELECTRIC COMPANY;AND IN THE COURT OF APPEALS SEVERAL JUDGES DISQUALIFIED THEMSELVES INCLUDING JUDGE SMITH,AMONG OTHERS; HOWEVER, THE FAILURE OF 3 JUDGES TO OPENLY STATE THEIR CONFLICT MUST YET BE RESOLVED,ESPECIALLY WHERE A MULTI-BILLION DOLLAR ANTI-TRUST CLAIM WAS PENDING AND ALL JUDGES HAD A DIRECT CONFLICT OF INTERESTS.

POINTS AND AUTHORITIES:

IV-cont'd.:

IT IS TIMELY TO POINT OUT THAT THE COURT OF APPEALS MADE OVER THIRTY ERRORS OF FACT AND LAW;FOUND FACT THAT DID NOT EXIST;REFUTED SWORN, UNDISPUTED TESTIMONY OF TRIAL EXPERT WITNESSES;AND OF COURSE THE FAMOUS "NO ERROR" DECISION BY JUDGE TIMBERS WHEN THE TRIAL COURT RULED COMPLAINT SPELLED OUT CONSPIRACY ONLY THROUGH ABOUT 9/7/67 AND CUT OFF ALL EVIDENCE AFTER THAT DATE;YET DUFFY RULED RES JUDICATA ON A COMPLAINT THAT STATED ISSUES AND FACTS OCCURRING AFTER THE DATE THE TRIAL COURT CUT OFF TESTIMONY(AND IT IS WELL SETTLED THAT ISSUES MUST HAVE ACTUALLY BEEN LITIGATED FOR RES JUDICATA) ,AND OF COURSE, JUDGE TIMBERS FOUND "NO ERROR".

A FAIR READING OF THE COMPLAINTS CLEARLY SHOW THAT MR. KREAGER DOES NOT CLAIM DAMAGES SUSTAINED BY HIS CORPORATION;CLEARLY MR. KREAGER ,AS SHOWN IN COUNT III WAS THE OBJECT OF THE CONSPIRACY AND PERSONALLY INJURED ASIDE AND APART FROM THE CORPORATION.

WHEREBY, THE DISTRICT COURT MUST BE REVERSED AS THE FACTS AND ISSUES STATED IN COUNT III OF THE COMPLAINT ARE DISTINCT AND SEPARATE FACTS AND ISSUES WHICH MUST BE DECIDED BY A JURY, THE TRUE TRIER OF FACT. JAMES TALCOTT V. ALLAHAD BANK LTD. 444 F 2d 451,458(1971)CERT. DEN. 404 US 940 "ISSUES TO BE CONCLUDED MUST BE IDENTICAL TO THAT INVOLVED IN PRIOR ACTION,IN PRIOR ACTION ISSUE MUST HAVE ACTUALLY BEEN LITIGATED. UBERSEE FINANZ KORPORATION V. BROWNELL 121 F·SUPP. 420,424,D.C.D.C. 1954 "WHERE A CORPORATION IS TREATED AS A SEPARATE ENTITY OR EXISTENCE IRRESPECTIVE OF THE PERSON OWNING THE STOCK,AN INDIVIDUAL STOCKHOLDER IS NOT BARRED FROM LITIGATING ISSUES INVOLVED IN HIS PERSONAL CAUSE BECAUSE THE SAME OR SIMILAR ISSUES MAY HAVE BEEN LITIGATED ON THE CORPORATION'S PRIOR ACTION".

POINTS AND AUTHORITIES:

IV-cont'd.:

THIS CASE IS WELL AT POINT. MR. KREAGER CLAIMS DAMAGES DERIVED FROM MULTILPE DIFFERENT SOURCES THAN THE PLAINTIFF CORPORATION IN THE FIRST ACTION. IN ADDITION, AS POINTED OUT IN UBERSEE FINANZ KORP-- ORATION V. BROWNELL ,MR. KREAGER ALSO HAS A RIGHT TO LITIGATE ISSUES INVOLVED IN HIS PERSONAL CAUSE OF ACTION WHICH MAY HAVE BEEN SIMILAR TO ISSUES LITIGATED BY THE CORPORATION;BUT MR. KREAGER'S CLAIMS, ISSUES AND FACTS EXTENDS FAR BEYOND THIS LIMITED FIELD AS A FAIR READING OF THE COMPLAINT READILY SHOWS.

IN ADDITION, THE MATTER OF JAMES TALCOTT INC. V. ALLAHAD BANK,LTD. IS CONTROLLING. 444 F.2d 451,458 (1971) CERT, DEN. 404 US 940.

POINTS AND AUTHORITIES:

V.: THE DISTRICT COURT ERRED IN DISMISSING COUNT IV OF THE COMPLAINT STATING THE COMPLAINT CONTAINS ONLY "CONCLUSORY ALLEGATIONS":

CHANNEL MASTER CORP. V. ALUMINUM SALES LTD. INC. 4 NY 2d 403 (1958)

--"ONE WHO FRAUDULENTLY MAKES A MISREPRESENTATION OF ***INTENTION*** FOR THE PURPOSE OF INDUCING ANOTHER TO ACT OR REFRAIN FROM ACTION IN RELIANCE THEREON IN A BUSINESS TRANSACTION" IS LIABLE FOR THE HARM CAUSED BY THE OTHER'S JUSTIFIABLE RELIANCE UPON THE MISREPRESENTATION.

COUNT IV-AMENDED COMPLAINT-MR. KREAGER REPEATS ALLEGATIONS 1-25 and 31-37 WITH LIKE EFFECT AS IF FULLY REPEATED.

PAR.11 AMENDED COMPLAINT STATES DEFENDANT SCHWARTZ ORDERED ONE LOUIS FELDMAN TO INSTANTLY DESIGN MR. KREAGER'S PATENTED DISPLAY WITH THE NAME "CLAIROL" ON IT FOR A TWO MILLION DOLLAR ORDER.SCHWARTZ FALSIFIED TESTIMONY REGARDING SAME WITH INTENT TO INJURE KREAGER AND ALSO CONSPIRED WITH OTHER DEFENDANTS IN DOING SO.

PAR. 16-STATES DEFENDANT CLAIROL AND BRISTOL MYERS FURTHER CONSPIRED WITH DIVERS OTHER PERSONS TO, TO FURTHER INDUCE DONALD DEVINDORF TO AVOID FEDERAL SERVICE AND NOT BE AVAILABLE FOR TRIAL IN MID-JUNE 1973.

PAR. 17 STATES CLAIROL'S ATTORNEY, DOUGLAS FRANCHOT,ESQ.CONSPIRED AND ASSISTED DONALD DEVINDORF IN FALSIFYING SWORN TESTIMONY.

PAR. 18 STATES CLAIROL AND BRISTOL MYERS FURTHER ACTED TO DESTROY VITAL RECORDS IN AN ATTEMPT TO OBSTRUCT JUSTICE.

PAR. 19 STATES: GEORGE EVANS TESTIFIED WITH MALICE AND FORETHOUGHT TO INJURE KREAGER.

POINTS AND AUTHORITIES:

V-cont'd.

PAR 21 STATES DEFENDANT SCHWARTZ TESTIFIED UNDER OATH THAT THE TWO MILLION DOLLAR DEAL WAS NOT ABOUT TO BE EFFECTUATED--ATTEMPTED TO COVER UP MATERIAL FACTS

PAR. 23-DEVINDORF FALSELY TESTIFIED THAT TWO MILLION DOLLAR DEAL NOT ABOUT TO BE EFFECTUATED

THE AMENDED COMPLAINT STATES MANY ADDITIONAL CLAIMS OF FRAUD AND DECEIT AGAINST THE DEFENDANTS AND WHILE THE CLAIMS ALSO CONSTITUTE ANTI-TRUST CLAIMS AGAINST THE DEFENDANTS, THEY ALSO CONSTITUTE FRAUD AND DECEIT AS WELL AND MUST BE TRIED ON SAID ISSUE.

THE ACTS COMPLAINED ABOUT WERE DEFINED WITH PARTICULARITY.IT IS NOT THE PURPOSE OF A COMPLAINT TO PLEAD EVIDENTIARY MATERIAL;BUT TO BE CONCISE AS REQUIRED BY THE FRCP.ALSO JUDGE WYATT IN MERCU-RAY VS: GENERAL ELECTRIC ET AL ALSO SO RULED.

COUNT IV ALLEGING FRAUD AND DECEIT AGAINST THE DEFENDANTS CONTAINS MATERIAL FACTS AND ISSUES SUFFICIENT FOR A JURY .

POINTS AND AUTHORITIES

V I . : THE DISTRICT COURT ERRED IN DENYING MR. KREAGER A DIRECTED VERDICT AGAINST DEFENDANT SCHWARTZ WHO FAILED TO MAKE AN ENTRY IN THE ACTION:

(a) THE COURT GRANTED PLAINTIFF PERMISSION TO FILE AN AMENDED COMPLAINT BY ORDER DATED OCTOBER 1,1973.

(b) PLAINTIFFS FILED AN AMENDED COMPLAINT ON 10/2/73 ADDING MICHEL S. SCHWARCTZ AS A DEFENDANT. (RECORD ON APPEAL #9).

(c) DEFENDANT SCHWARTZ FAILED TO MAKE AN APPEARANCE IN CASE;ALSO WROTE MR. KREAGER A NOTE ASKING MR. KREAGER NOT TO SEND HIM PAPERS ABOUT THE LITIGATION AS WHEN TRIAL COMES HE WOULD TESTIFY.

(d) 5/14/74, MR. KREAGER FILED A MOTION FOR JUDGMENT AGAINST DEFENDANT SCHWARTZ.

(d) 6/25/74 DUFFY,D.J. DISMISSED ALL COUNTS OF COMPLAINT AND STATED "ALL OF THE SUNDRY MOTIONS FILED BY THE PLAINTIFFS SINCE THE DEFENDANTS' MOTIONS TO DISMISS ARE NOW MOOTED"

MR. SCHWARTZ FAILED TO MAKE AN APPEARANCE FROM 10/2/73 TO 6/25/74; YET THE COURT PROTECTED THIS DEFENDANTS AND FAILED TO GRANT JUDGMENT FAVORING MR. KREAGER AS REQUIRED BY LAW. THE COURT ERRED IN FAILING TO ACT ON THIS MOTION;HOLDING UNTIL IT DECIDED TO DISMISS ALL COUNTS OF THE COMPLAINT AND THEN STATING "MOTION MOOTED"..

THE CONDUCT OF THE COURT SPEAKS FOR ITSELF AND MUST BE REVERSED BY THIS COURT OF APPEALS. THE COMPLAINT STATED FACTS AND ISSUES OF SUBSTANCE WHICH WERE SUFFICIENT FOR A JURY DETERMINATION IF MR. SCHWARTZ HAD MADE AN APPEARANCE.

WHEN DEFENDANT SCHWARTZ FAILED TO MAKE AN APPEARANCE IN THE ACTION;ALSO FAILED TO RESPOND TO MOTION FOR JUDGMENT;JUDGMENT WAS PROPER TO BE ENTERED.

POINTS AND AUTHORITIES

V II . : THE DISTRICT COURT ERRED IN PERMITTING PLAINTIFF CORPORATE COUNSEL TO WITHDRAW AND/OR FAILING TO HOLD CERTAIN ATTRONEYS IN CONTEMPT

(a) 8/10/73-CORPORATE ATTORNEYS FILED NOTICE OF APPEARANCE

(b) 9/25/73-SAME ATTORNEYS MOVED IN APPEALS COURT TO WITHDRAW IN ACTION

(c) 10/1/73-DUFFY,D.J. ORDERED REPLEAD AND ADD MICHEL S SCHWARTZ AS A DEFENDANT

(d) 10/2/73-AMENDED COMPLAINT FILED IN DISTRICT COURT

(e) 10/3/73 U.S. MARSHAL SERVED AMENDED COMPLAINT UPON DEFENDANTS

(f) 10/8/73 ALFRED LEE,ESQ.OF WEIL, LEE & BERGIN ESQS. REPRESENTING BRISTOL MYERS & CLAIROL,WROTE PLAINTIFF CORPORATE ATTORNEY (ONLY ENTERED CASE THREE WEEKS PRIOR) IN ATTEMPT TO OBSTRUCT JUSTICE REQUESTING ATTRONEYS NOT SIGN THE AMENDED COMPLAINT

(g) 10/15/73 PLAINTIFF CORPORATE ATTORNEYS MADE FORMAL MOTION TO WITHDRAW;AFTER TELEPHONIC CONVERSATION WITH MR. LEE ON 10/4/73 WHEREBY MR. LEE AND PLAINTIFF ATTORNEY AGREED BETWEEN THEMSLEVES T E R M S FOR WITHDRAWAL.

(h) 10/18/73-DUFFY,J. SIGNED ORDER ALLOWING WITHDRAWAL WITHOUT EVEN A HEARING INTO THE MATTER WHICH WAS OPPOSED BY MR, KREAGER

(i) 10/24/73-CLAIROL & BRISTOL MYERS FILED SECOND MOTION TO DISMISS COMPLAINT BASE ON CORPORATION NOT HAVING COUNSEL AFTER COURT QUICKLY SIGNED WITHDRAWAL SETTING STAGE FOR SAID MOTION

(j) 10/18/74 MR. KREAGER FILED MOTION TO HOLD MESSRS. LEE, GOLDSTEIN & ASCHER IN CONTEMPT OF COURT

(k) 10/26/73-DUFFY,J. REFUSED TO HOLD IN CONTEMPT AND DID NOT REQUIRE PRESENCE OF ASCHER OR GOLDSTEIN IN THE COURTROOM.

VII-cont'd.:

10/26/73-DUFFY,J. ALSO REFUSED MOTION TO TRANSFER TO ANOTHER CIRCUIT

PARTS OF THE LETTER OF OCTOBER 3,1973 FROM DEFENDANTS COUNSEL TO PLAINTIFF CORPORATION COUNSEL READS IN PART:

(a) THERE IS NOT A SHREWD OF EVIDENCE TO SUPPORT ANY OF THOSE ACCUSATIONS

(b) RULE 11 (NOT) OBSERVED SIMPLY BY RELYING UPON THE WHOLLY UNSUPPORTED STATEMENTS OF MR. KREAGER WHO FAILED TO PERSUABE THE JURY IN THE CASE OF MERCU-RAY VS. GENERAL ELECTRIC

(c) THE RULE PUTS RESPONSIBILITY UPON THE SIGNATORY ATTORNEY FOR SCANDALOUS AND INDECENT MATTER

THE LETTER WHICH SPEAKS FOR ITSELF WAS WRITTEN WITH INTENT TO RESTRAIN PLAINTIFF CORPORATE ATTORNEYS FROM SIGNING THE AMENDED COMPLAINT;
IN A LATTER TELEPHONIC CONVERSATION WITH SAID COUNSEL, MR. LEE DID IN FACT NEGOTIATE AND CAUSE THE WITHDRAWAL OF SAID COUNSEL.
WHEN MR. KREAGER ADVISED PLAINTIFF CORPORATE ATTORNEYS THAT THEIR RESIGNATION WOULD BE OPPOSED, THEY THREATENED MR. KREAGER TO MAKE UNTRUE ACCUSATIONS WHICH THEY DID IN FACT INCORPORATEIN THE MOTION TO WITHDRAW AND WHICH DUFFY,J. QUICKLY SIGNED WITHOUT EVEN A HEARING INTO THE MATTER.
CLEARLY, THE COURT KNEW THAT WITHDRAWAL OF COUNSEL WOULD RESULT IN A MOTION BY DEFENDANT AGAIN TO DISMISS;YET THE COURT MADE NO EFFORT TO PROTECT THE RIGHTS OF THE PLAINTIFF CORPORATION OR EVEN TO DETERMINE WHY THE ATTORNEYS WERE RESIGNING AFTER MR. KREAGER STATED THE CONTENT OF THEIR AFFIDAVIT WAS FALSE.

SUCH AN OBSTRUCTION OF JUSTICE, TO WRITE PLAINTIFF COUNSEL ATTEMPTING

VII-cont'd.:

TO PREVENT SAID COUNSEL FROM SIGNING THE AMENDED COMPLAINT AND FOLLOWED BY TELEPHONIC CONVERSATIONS ACTIVELY SOLICITING SAID ATTORNEYS WITHDRAWAL REQUIRES THIS COURTS REDRESS.

THE CLAIROL AND BRISTOL-MYERS DEFENDANTS COULD HAVE PROCEEDED AFTER THE COMPLAINT WAS FILED TO (a) TAKE DEPOSITIONS (b) MOVE TO DISMISS OR (c) ANY OTHER REMEDY AVAILABLE BY LAW;HOWEVER, TO OPENLY SOLICIT THE CORPORATE PLAINTIFF COUNSEL NOT TO SIGN AN AMENDED COMPLAINT(WHICH WAS IN FACT SIGNED PRIOR TO TIME LETTER ARRIVED) WAS AN OBSTRUCTION OF JUSTICE AND MUST BE DEALT WITH ACCORDINGLY.

WHEREFORE, THIS COURT MUST REVERSE THE DISTRICT COURT AND ORDER MESSRS: ALFRED T. LEE, (ATTORNEY FOR BRISTOL-MYERS AND CLAIROL) AND ABBEY GOLDSTEIN AND RICHARD ASCHER IN CONTEMPT OF COURT FOR THEIR ACTS OF CONSPIRING TO INJURE PLAINTIFF CORPORATION AND DID IN FACT CAUSE SAID INJURY AS EVIDENCED BY THIS APPEAL,AND ORDER EACH TO PAY MR. KREAGER THE SUM OF $5,000. FOR THEIR OBSTRUCTION OF JUSTICE. (RECORD ON APPEAL NOS. 13,14,and 18).

FOR DEFENDANT COUNSEL TO SOLICIT WITHDRAWAL OF PLAINTIFF CORPORATE COUNSEL IN AN ATTMEPT TO OBSTRUCT JUSTICE IN ORDER THAT DEFENDANTS COULD INSTANTLY MOVE AGAIN TO DISMISS ON GROUNDS THAT PLAINTIFF CORPORATION WAS WITHOUT COUNSEL IS IMPROPER;AND DEFENDANTS DID IN FACT INSTANTLY SO MOVE AGAIN TO DISMISS AND THE PATTERN OF CONDUCT NOT ONLY REPRESENTS A QUALITY OF UNFAIRNESS;BUT SHOWS A QUALITY OF JUSTICE THAT IS REPUGNANT TO THE JUDICIAL PROCESS.

POINTS AND AUTHORITIES

VIII.: THE DISTRICT COURT ERRED IN (a) REFUSING TO RECUSE HIMSELF AS JUDGE AFTER AFFIDAVIT OF PREJUDICE FILED; (b) AND/OR NOT TRANSFERRING TO ANOTHER JUDGE; AND OR (c) TRANSFERRING TO ANOTHER CIRCUIT ;AND/or (d) FAILING TO GRANT PLAINTIFF A PROTECTICE ORDER

10/26/73 DUFFY,D.J. DENIED ORAL MOTION TO TRANSFER TO ANOTHER CIRCUIT WHEN MR. KREAGER REQUESTED THE CASE TRANSFERRED TO THE HONORABLE JUDGE SIRICA IN WASHINGTON D.C. DUE TO PLAINTIFF'S CHARGES OF CASE CONNECTION WITH REPUBLICAN PARTY POLITICS.

11/5/73 MR. KREAGER FILED AN AFFIDAVIT OF PREJUDICE ASKING TO BE REASSIGNED TO ANOTHER JUDGE IN THE SAME DISTRICT OR ANOTHER CIRCUIT. (RECORD ON APPEAL # 20); based ON:

(a) JUDGE DUFFY ERRED IN RES JUDICATA MATTER STATING MATTERS IN COMPLAINT THAT OCCURRED IN YEARS 1968 THROUGH 1973 WERE TRIED BY JUDGE WEINFELD WHO CUT OFF TESTIMONY AS SPELLED OUT IN THE ORIGINAL COMPLAINT AS OF ON OR ABOUT 9/7/67. WHILE NOW JUDGE TIMBERS SAID "NO ERROR",THIS BAD LAW OF THE 2nd CIRCUIT WHICH IS SURFACE ERROR DOES NOT ALTER THE FACT THAT THE ISSUES WERE NEVER TRIED AND TWO NIXON APPOINTED JUDGES JUGGLING NEARLY 30 BILLION DOLLARS IN ANTI-TRUST CLAIMS AMONG THEMSELVES DOES NOT ALTER THE FACTS. ON 11/12/73 DUFFY,J. DENIED THE MOTION FILED 11/7/67 TO REMOVE HIMSELF,

(b) IN ADDITION IN INSTANT MATTER,JUDGE DUFFY REFUSED TO HOLD ATTORNEYS IN CONTEMPT;DID NOT EVEN REQUIRE TWO OF THE ATTORNEYS PRESENT DURING HEARING;REFUSED TO HOLD IN CONTEMPT WHEN (a) PLAINTIFF CHARGED FALSE AFFIDAVIT BEFORE THE COURT; AND (b) CLAIROL ATTORNEY SOLITICITED THEIR WITHDRAWAL WITH LETTER AND TELEPHONIC CALLS WHICH WERE KNOWN TO MR. KREAGER;(c) DUFFY,J. WAS FORMERLY WITH S.E.C. WHOM MR. KREAGER HAD ACCUSED OF IMPROPER CONDUCT IN INVESTIGATIONS OF THE DEFENDANTS AND OTHERS.

VIII-cont'd.

THE MERE FACT THAT AN AFFIDAVIT OF PREJUDICE WAS FILED WAS MORE THAN SUFFICIENT REASON FOR THE DISTRICT JUDGE TO RECUSE HIMSELF FROM THE CASE;AND THE COURT'S CONDUCT REQUIRES REDRESS WHERE THE PLAINTIFF CORPORATION OWNED A PATENT THAT EXPIRED 8/6/74 WHICH THE COURT KNEW IS CLAIMED WOULD HAVE REVOLUTIONIZED THE LIGHTING INDUSTRY,AMONG OTHER THINGS, AS WELL AS RESULTED IN A MAJOR SAVINGS IN THE CONSUMPTION OF ALL ENERGY USED IN THE UNITED STATES WITH MODIFICATION.

YETM A JUDGE WHO ALLOWED THE MERITS TO SWING IN BALANCE FOR NEARLY A YEAR WHILE THE COURT PLAYED WITH FRIVOLOUS MOTIONS TO DISMISS WHICH THE COURT SHOULD HAD INSTANTLY PUT TO REST AND ORDERED THE ATTORNEYS HELD IN CONTEMPT FOR THEIR MISCONDUCT IN THE MATTER. INSTEAD, JUDGE DUFFY REFUSED TO RECUSE HIMSELF FROM THE CASE; THREW OUT A SECOND COMPLAINT WHEREBY BY HIMSELF DUFFY,J. DISMISSED OVER FIFTEEN BILLION DOLLARS OF CLAIMS WITHOUT HEARING ON THE MERITS AND COUPLED WITH JUDGE TIMBERS, ALSO A PRODUCT OF THE NIXON ADMINISTRATION, JUGGLED ABOUT THIRTY BILLION DOLLARS OF CLAIMS AMONG THEMSELVES; CERTAINLY THE CONDUCT OF THE COURT REQUIRES REDRESS BY THIS COURT OF APPEALS AS WELL AS THE ATTORNEYS INVOLVED.

(c) 3/25/74 MR. KREAGER FILED NOTICE OF MOTION FOR A PROTECTIVE ORDER ORDERING INSTANT DEPOSITIONS OF CERTAIN PARTIES(RECORD ON APPEAL NOS. 26,27 and 28)INCLUDING CHAIRMAN OF BOARDS OF GENERAL ELECTRIC, BRISTOL MYERS, CLAIROL, NEW YORK TELEPHONE COMPANYCLUETT-PEABODY AND OTHERS. ATTORNEYS FOR CLAIROL-BRISTOL MYERS CALLED IT A "DRAGNET",WHICH SHOWS THE DEEP CONCERN FOR THE FACT THAT MR. KREAGER INTENDED TO DEPOSE THE OFFICERS AND DIRECTORS OF SAID CORPORATION WHICH WERE DIRECTLY RESPONSIBLE FOR THIS GIANT WORLDWIDE CONSPIRACY.DUFFY,J. AGAIN FAILED TO ACT UNTIL ORDER OF JUNE 25,1974 DISMISSING STATING "ALL OTHER MOTIONS MOOTED".

VIII-cont'd.

NOT ONLY WOULD THE DEPOSITIONS OF THE PARTIES NAMED CONCLUSIVELY PROVE THE GIGANTIC WORLDWIDE CONSPIRACY;BUT MR. KREAGER ALLEGES THAT IT WOULD ALSO HAVE REVEALED THE MAJOR CONTRIBUTIONS OF THESE PARTIES TO THE REPUBLICAN PARTY THAT HAS SO DEEPLY OBSTRUCTED JUSTICE IN THE THREE ANTI-TRUST CASES WHICH JUDGE DUFFY CALLS RELATED. THEY APPEAR TO BE EVER SO RELATED TO WATERGATE AND "ALL THE PRESIDENT'S MEN" AND REQUIRED TRANSFERRING TO ANOTHER CIRCUIT AND IN PARTICULAR TO JUDGE SIRICA WHO KNOWS HOW TO DEAL WITH ATTORNEYS WHOM JUDGE DUFFY HAS PLACED "ABOVE THE LAW".

CLEARLY, AN OBSTRUCTION OF JUSTICE HAS OCCURRED WHICH CANNOT BE COVERED UP BY DENYING MR. KREAGER HIS DAY IN COURT AS GUARANTEED BY THE UNITED STATES CONSTITUTION.IF COURT OFFICIALS ARE VIOLATING MR. KREAGER'S CIVIL RIGHTS UNDER 42 USC 1983 or other sections, THEN THIS MATTER WILL BE DEALT WITH ACOORDINGLY.

HOWEVER, FOR THE COURT THROUGH JUDGE DUFFY TO REFUSE TO TRANSFER TO ANOTHER DISTRICT JUDGE;REFUSE TO RECUSE HIMSELF; AND EVEN REFUSE TO TRANSFER TO ANOTHER CIRCUIT WITH THE SUBSTANTIAL CONFLICT OF INTEREST BY OFFICERS OF THE COURT,CERTAINLY WAS ERROR ON THE PART OF THE COURT WHICH REQUIRES PROPER REDRESS BY THIS COURT OF APPEALS.

CLEARLY THE INSTANT CASE MUST BE ASSIGNED TO A DIFFERENT DISTRICT JUDGE OR IN THE ALTERNATIVE TO ANOTHER CIRCUIT AND PLAINTIFF PREFERS WASHINGTON D.C. AND IF POSSIBLE TO THE HONORABLE JUDGE JOHN SIRICA IN LIGHT OF JUDGE DUFFY CALLS THE THREE CASES RELATED AND MR. KREAGER AGREES THAT THEY ARE RELATED TO THE RESIGNED PRESIDENT OF THE UNITED STATES AND THE REPUBLICAN PARTY .

POINTS AND AUTHORITIES

I X . : ISSUES OF RES JUDICATA, COLLATERAL ESTOPPEL, AND/OR PRIVITY SHOULD BE LAID TO REST BY THIS COURT OF APPEALS:

THE COURT OF APPEALS FOR THE SECOND CIRCUIT BY ORDER DATED JULY 24,1974 INVITED ANY PARTY TO RAISE ISSUES WITH RESPECT TO RES JUDICATA MATTERS BEFORE THE PANEL THAT HEARS THE APPEAL.

THE BASIC INGREDIENTS FOR RES JUDICATA OR COLLATERAL ESTOPPEL ARE (a) ISSUES TO BE CONCLUDED MUST BE IDENTICAL;(b) IN PRIOR ACTION ISSUE MUST HAVE ACTUALLY BEEN LITIGATED. JAMES TALCOTT INC. VS: ALLAHAD BANK, LTD. 444 F. 2d 451 ,458,(1971) CERT, DEN. 404 U.S. 940.

IN THE MERCU-RAY INDUSTRIES, INC. VS: GENERAL ELECTRIC COMPANY CASE TRIED IN MID JUNE 1973 BEFORE HONORABLE JUDGE WEINFELD AND A JURY (68 CIVIL 944) (73-1987 ON APPEAL) ,JUDGE WEINFELD CUT OFF ALL TESTIMONY AS OF OR ABOUT 9/7/67,THE DATE SPELLED OUT IN THE COMPLAINT. WHEREBY ANY CONTINUOUS ACTS OF CONSPIRACY NOR NEW ACTS OF CONSPIRACY CLEARLY WERE NOT TRIED BY THE RULING OF JUDGE WEINFELD.

BRISTOL MYERS AND CLAIROL WERE NOT DEFENDANTS IN SAID ACTION; THE REFERENCE TO SAID CORPORATIONS PERTAINED ONLY TO THE FACT THAT CLAIROL AND MERCU-RAY WERE ABOUT TO CONSUMMATE A TWO MILLION DOLLAR DEAL WHEN GENERAL ELECTRIC ASKED MR. KREAGER TO DROP THE CLAIROL DEAL IN FAVOR OF A 50-50 JOINT VENTURE WITH THE GENERAL ELECTRIC COMPANY. AT NO TIME DID MR. KREAGER ASSERT ANY RESPONSIBILITY OR CONSPIRACY ON THE PART OF CLAIROL OR BRISTOL MYERS RELATING TO MATTERS IN 1967 AS IT WAS MR. KREAGER;NOT CLAIROL WHO BROKE OFF DEALINGS.

IX-cont'd.

THE INJURY ALLEGED IN THE INSTANT COMPLAINT IS A RESULT OF ACTS ON THE PART OF THE DEFENDANTS WHICH COMMENCED MUCH LATER THAN THE YEAR 1967 WHEN JUDGE WEINFELD CUT OFF TESTIMONY;IN FACT MOST OF THE EVENTS ALLEGED OCCURRED ON AND AFTER 1970 AS SPELLED OUT IN PARAGRAPHS 14 through 21 OF THE COMPLAINT ;PARAGRAPHS 23 THROUGH 26 AND PARAGRAPHS 27 THROUGH 42. OF THE AMENDED COMPLAINT. SUBSTANTIAL DAMAGE IS BASED UPON FALSE TESTIMONY IN DEPOSITIONS IN 1970; AND ACTS OF AVOIDING FEDERAL SERVICE,DESTRUCTION OF VITAL RECORDS TO OBSTRUCT JUSTICE AND OTHER MATTERS WHICH OCCURRED MANY YEARS AFTER TJE DATE JUDGE WEINFELD CUT OFF TESTIMONY AS OF 9/7/67.

FOR THE PURPOSE OF COLLATERAL ESTOPPEL GENERALLY, WHERE A QUESTION OF FACT IS PUT IN ISSUE BY PLEADINGS AND IS SUBMITTED TO JURY OR OTHER TRIER OF FACT FOR ITS DETERMINATION AND IS DETERMINED, THAT QUESTION HAS BEEN ACTUALLY LITIGATED. CLEARLY, UNDER NO INTERPRETATION COULD THE INSTANT MATTERS WHICH OCCURRED IN the year 1970 AND AFTERWARDS HAVE BEEN LITIGATED DIRECTLY OR INDIRECTLY IN TESTIMONY CUT OFF AS OF 9/7/67. IN ADDITION, CLAIROL, BRISTOL MYERS AND SCHWARTZ WERE NOT DEFENDANTS IN MERCU-RAY VS: GENERAL ELECTRIC .

D.C. CAL. 1954 SMALE &. ROBINSON INC. VS US 123 F.SUPP. 457

PUBLIC POLICY DEMANDS THAT MANDATE OF THE LAW SHOULD OVERRULE ANY DOCTRINE OF ESTOPPEL,AND NO AMOUNT OF MISREPRESENTATION CAN PREVENT A PARTY--FROM ASSERTING AS ILLEGAL THAT WHICH THE LAW DECLARES TO BE SUCH.

CT. CL. 1972.ONE ESSENTIAL ELEMENT OF ESTOPPEL IS DETRIMENTAL RELIANCE. DANA CORP. V. U.S. 470 F. 2d 1032.

IX-cont'd.:

CA MONT. 1958. THE BURDEN OF PROVING EACH AND ALL OF THE FIVE ELEMENTS OF EQUITABLE ESTOPPEL IS UPON THE PARTY ASSERTING THE DEFENSE. CEDAR CREEK OIL & GAS CO. V. FIDELITY GAS CO. 249 F. 2d 277,CERTIORARI DENIED STATE COURT 128,314 U.S. 667,86 L.Ed. 534.

D.C. N.J. 1945 THE BURDEN IS UPON THE PARTY INVOKING ESTOPPEL TO PROVE ALL OF THE ELEMENTS, AND FAILURE TO PROVE ANY ONE OR MORE ELEMENT IF FATAL. BROWN V. NEW YORK LIFE INSURANCE CO. 59 F. SUPP. 721,AFFIRMED 148 F. 2d 524. ALSO SEE VIETZKE V. AUSTIN CO. 54 F. SUPP. 265.

RES JUDICATA REQUIRES THREE PERTINENT QUESTIONS:

1. IDENTICAL ISSUES IN PRIOR ACTION
2. FINAL JUDGMENT ON THE MERITS
3. PART IN PRIVITY WITH PARTY TO PRIOR ADJUDICATION

CLEARLY THE ISSUES OF FACT IN THE INSTANT MATTER OCCURRED MOSTLY AFTER THE YEAR 1969 AND CLEARLY NONE OF THE ISSUES WERE EVEN MENTIONED IN THE MERCU-RAY CASE AND CLAIROL ET AL WER E NOT PARTIES TO SAID PRIOR ACTION. THE SUBSTANCE OF THE CLAIMS IN THE INSTANT ACTION ARE NOT RELATED IN ANY MANNER TO TO CLAIMS IN MERCU-RAY VS: GENERAL ELECTRIC ET AL. THE ALLEGATIONS ARE ALL NEW AS HAPPENINGS SINCE ABOUT THE YEAR 1970. THE ISSUES AND FACTS HAVE NEVER BEEN LITIGATED IN ANY COURT. NEW MATERIAL ISSUES ARE PRESENT.

IN THE INSTANT ACTION: (a) THE ISSUES PRESENTED IN THE AMENDED COMPLAINT ARE CLEARLY ISSUES THAT OCCURRED AFTER 9/7/67 WHEN JUDGE WEINFELD CUT OFF ESTIMONY AND THE ISSUES IN THE INSTANT MATTER HAVE NEVER BEEN DECIDED IN ANY COURT OF LAW;(b) ALSO JUDGE DUFFY DISMISSED BECAUSE (1) CORPORATION

IX cont'd.

WAS NOT REPRESENTED BY COUNSEL; AND KREAGER LACKED STANDING. CLEARLY, THERE NEVER HAS BEEN A JUDGMENT ON THE MERITS. IN ADDITION, KREAGER IN THE INSTANT COMPLAINT IS NOT AT PRIVITY WITH MERCU-RAY INDUSTRIES, INC. WHERE THE COMPLAINT HAS SPELLED OUT ISSUES AND FACT SEPARATE AND APART FROM MERCU-RAY AND REQUIRE A PLENARY ACTION AND TRIAL BY JURY-THE TRUE TRIER OF FACT.

CLEARLY WHERE THE DEFENDANTS ARE DIFFERENT AND ALSO THE CAUSES OF ACTION ARE DIFFERENT AND THE ISSUES HAVE NEVER BEEN LITIGATED, THE DEFENDANTS CANNOT CLAIM RES JUDICATA.

FOR THE REASONS ADVANCED, AND SINCE THE SUBJECT MATTERS WERE IN FACT ARGUED BEFORE DUFFY,D.J. HOWEVER, JUDGE DUFFY FAILED TO PUT AT REST AS DUFFY,J. SOLICITED ORAL MOTIONS (SEE DOCKET SHEET RULING ON ORAL MOTIONS),CLEARLY, IN THE INTERESTS OF JUSTICE AND A SPEEDY TRIAL, THIS HONORABLE COURT SHOULD PUT ALL MATTERS REALTONG TO RES JUDICATA, COLLATERAL ESTOPPEL AND/OR PRIVITY TO REST AND ALL THE DEFENDANTS FOREVER BARRED FROM RAISING THE ISSUES IN THE DISTRICT COURT.

POINTS AND AUTHORITIES

X . : THE CONDUCT OF THE DISTRICT JUDGE REQUIRES THIS COURT TO ASSIGN TO (a) PREFERABLY ANOTHER CIRCUIT; (b) OTHER DISTRICT JUDGE

THE CONDUCT OF KEVIN THOMAS DUFFY,D.J. REQUIRES STRONG REPRIMAND BY THIS COURT OF APPEALS.

IT WAS JUDGE DUFFY WHO RULED RES JUDICATA REGARDING GENERAL ELECTRIC, TOKYO SHIBAURA ELECTRIC CO. LTD. AND OTHERS IN AN ACTION FOR $750,000,000. WHEREBY MR. KREAGER WAS THE ONLY PLAINTIFF,ALLEGING VIOLATIONS OF THE ANTI-TRUST LAWS,AMONG OTHER THINGS,

ALTHOUGH WILLIAM HOMER TIMBERS, C.J.,ALSO APPOINTED BY PRESIDENT NIXON, AS WELL AS JUDGE DUFFY, FOUND NO ERROR, THE ELEMENTARY FACT REMAINS THAT THE DECISION WAS TOTALLY ERRONEOUS BASED ON THE ELEMENTARY FACT : FOR RES JUDICATA ,IT IS WELL SETTLED AND WAS ADMITTED BY THE DEFENDANTS THAT THE ISSUES MUST HAVE ACTUALLY BEEN LITIGATED. THE KREAGER COMPLAINT SPELLED OUT FACTS AND ISSUES THAT OCCURRED I.E. IN YEARS 1970,1971,1972, 1973; AND IN THE FIRST ACTION JUDGE WEINFELD RULED THAT HE WOULD NOT PERMIT TESTIMONY BEYOND THAT SPELLED OUT IN THE COMPLAINT;NAMELY, ABOUT 9/7/67. IT WAS IMPOSSIBLE FOR FACTS AND ISSUES WHICH OCCURRED IN LATER YEARS TO HAVE BEEN TRIED IN A MATTER WHERE TESTIMONY WAS LIMITED TO A THREE MONTH PERIOD IN 1967.

A COURT OFFICIAL STATED TO MR. KREAGER ,WHEN THIS ISSUE WAS DISCUSSED, "IT APPEARS THAT YOU(KREAGER) AREN'T GETTING THROUGH TO THE JUDGES". EMPHASIS ADDED. HOWEVER, EVERY ATTORNEY WHO HAS BEEN SHOWN THE DECISION STATES IN EFFECT "BAD LAW" ;TWO NIXON APPOINTED JUDGES TOGETHER CONTROLLING FIFTEEN BILLION DOLLARS OF ANTI-TRUST ACTIONS AND PREVENTED THEM FROM PROCEEDING ON THE FACTS AND ISSUES,AMONG OTHER THINGS, IS AN ABUSE OF POWER.

POINTS AND AUTHORITIES:

IN THE INSTANT MATTER, JUDGE DUFFY KNEW THAT IT WAS PRACTICALLY IMPOSSIBLE FOR PLAINTIFF CORPORATION TO OBTAIN COUNSEL;HOWEVER, WHEN THE CORPORATION DID IN FACT HIRE COUNSEL;INSTANTLY FOLLOWED BY ATTORNEY ALFRED T. LEE WRITING SAID ATTORNEYS A 3 PAGE LETTER ATTEMPTING TO BLOCK THE FILING OF THE AMENDED COMPLAINT;NOT ONLY DID JUDGE DUFFY (a) PERMIT PLAINTIFF CORPORATION COUNSEL TO WITHDRAW;BUT DUFFY,J. SIGNED THE MOTION TO WITHDRAW EXACTLY 3 DAYS AFTER MOTION WAS MADE AND INSTANTLY SET THE STAGE FOR THE DEFENDANTS MOVING AGAIN TO DISMISS WHICH THEY INSTANTLY DID,WHEREBY DUFFY,J. APPEARED TO KNOW THEN THAT HE INTENDED TO BLOCK A "CHANGE OF TITLE" SO HE COULD DISMISS THE CASE. (b) DUFFY,J. ALSO NOT ONLY REFUSED TO HOLD ATTRONEYS IN CONTEMPT;BUT DID NOT EVEN REQUIRE THEIR PRESENCE IN THE HEARING WHICH WAS NOT CONDUCTED IN INTERESTS OF JUSTICE.

DUFFY ,J. ALSO USED AS EXCUSE FOR NOT CHANGING TITLE, AN AFFIDAVIT OF A GENERAL ELECTRIC ATTORNEY THAT SIMPLY STATED "FOR REASONS OF OUR OWN" WE DID NOT CONTEST IN COURT OF APPEALS. WHEN FACT WAS BEFORE DUFFY THAT THEIR COUNTERPART, INTERNATIONAL TELEPHONE & TELEGRAPH DID IN FACT OPPOSE THE MOTION IN COURT OF APPEALS WHEREBY GE'S WAS NOT REQUIRED, DUFFY IGNORED THE FACTUAL DATA.

WHEN (a) AFFIDAVIT OF PREJUDICE FILED AGAINST THE JUDGE ,DUFFY,J. STILL REFUSED TO RECUSE HIMSELF ;(b) REFUSED TO TRANSFER TO ANOTHER CIRCUIT; (c) REFUSED TO TRANSFER TO ANOTHER JUDGE,AMONG OTHER THINGS

THIS WAS FOLLOWED BY DUFFY,J. ACCUMULATIONG MOTINS MADE BY MR. KREAGER, INCLUDING (a) MOTION FOR PROTECTIVE ORDER ;(b) MOTION TO TAKE DEPOSTIONS; (c) MOTION FOR JUDGEMENT AGAINST DEFENDANT SCHWARTZ WHO NEVER MADE AN APPEARANCE IN THE CASE,NOT ACTING ON SAID MOTIONS, AWAITING UNTIL THE WHOLE CASE WAS DISMISSED AND THEN SAID "OTHER MOTIONS MOOTED".

POINTS AND AUTHORITIES

WHEN A DISTRICT JUDGE PERSONALLY ATTACKS A PLAINTIFF IN HIS OPINION INSTEAD OF WRITING THE LAW OF THE CASE (APPARENTLY NO LAW TO WRITE AS THE JUDGE SO STATES THAT HE ACTED ON "POLICY"),SPEAKS FOR ITSELF.
IT APPEARS THAT AFTER THE SAME JUDGE RULING OF RES JUDICATA WHICH WAS A $750,000,000. ORDER GAVE THE JUDGE SUCH A GUILTY COMPLEX THAT HE HAD NO ALTERNATIVE BUT TO ATTACK THE MAN HE HAD TREATED SO UNJUSTLY.

THIS CASE, AS WELL AS THE TWO CASES WHICH DUFFY,J. CALLS RELATED REFLECT A SIGNIFICANT IMPROPRIETIES BY GOVERNMENT REPRESENTATIVES FROM BEGINNING TO END AND A RECKLESS DISREGARD OF THE FACTS AS WELL AS PERSONAL LIBERTIES.
JUDGE DUFFY APPEARS TO ATTEMPT DISCOURAGE AND PREVENT MR. KREAGER FROM EXERCISING HIS RIGHTS UNDER USCA CONST. AMEND. 1. DUFFY,J. APPARENTLY DOESN'T WANT MR. KREAGER TO ACT AS HIS OWN ATTORNEY BECAUSE DUFFY,J. KNOWS THAT MR. KREAGER WILL BRING THE REAL ISSUES TO LIGHT.
IT APPEARS THAT THE JUDGE IS ATTEMPTING TO SHIELD THE DEFENDANTS AGAINST CHARGES WHICH MAY BE CRIMINAL IN NATURE;THE LAW IS WELL SETTLED THAT NO JUDGE HAS THE POWER TO PREVENT A PARTY FROM STATING AS ILLEGAL THAT WHICH IS ILLEGAL.
WHILE A PATENT ,WHICH PLAINTIFF CLAIMED WITH FURTHER RESEARCH COULD POSSIBLY (a) ELIMINATE BALLAST TRANSFORMERS;(b) POWER LINE FEEDER CABLES; (c) THE "LIGHT BULB" ITSELF BECOME OBSOLETED;AND DUFFY,J. KNOWING THAT PLAINTIFF CLAIMED A POSSIBLE DRASTIC SAVINGS IN OVERALL POWER CONSUMPTION IN THE UNITED STATES WHILE THIS COUNRTY FACED AN ENERGY CRISIS;THIS JUDGE WAS CONTENT TO TIE UP SUCH AN IMPORTANT CASE IN MINUTE PROCEDURAL MOTIONS AND WHILE THE SAME JUDGE WAS ABLE TO (a) RULE TO ALLOW COUNSEL TO RESIGN IN 3 DAYS WHICH REQUIRED HEARINGS IN DEPTH; THE SAME JUDGE (b) FAILED TO ACT ON SIMPLE MOTION TO DISMISS FOR ABOUT NINE MONTHS.

POINTS AND AUTHORITIES

THE MOTION TO DISMISS HAD NO ISSUES OF FACT AS EVEN IN SUMMARY JUDGMENT MOTIONS TO DISMISS;CLEARLY THIS MOTION SHOULD HAVE BEEN DISPOSED OF WITHIN 3 DAYS, THE SAME TIME PERIOD THE SAME JUDGE ACTED ON A MOTION TO ALLOW PLAINTIFF CORPORATIONS'S COUNSEL TO WITHDRAW. BUT, DUFFY,J. ALLOWED THE PATENT TO SLOWLY DIE UNTIL IT ULTIMATELY REACHED ITS DEATH ON AUGUST 6,1974.

IT APPEARS THAT DUFFY,J. ACTED WITH (1) DISREGARD FOR HIS DUTIES AS A CITIZEN AND UNMINDFUL OF HIS DUTIES AS A JUDGE;(2) ACTED UNMINDFUL OF HIS SOLEMN DUTIES TO HIS OFFICE AND CONTRARY TO THE SACRED OBLIGATIONS BY WHICH HE STOOD BOUND TO DISCHARGE THEM "FAITHFULLY AND IMPARTIALLY" AND WITHOUT RESPECT TO PERSON; (3) THE COURT CONDUCT OF THE JUDGE WAS MARKED WITH INJUSTICE, PARTIALITY AND INTEMPERANCE;(4)DUFFY,J. IMPAIRED PUBLIC CONFIDENCE, AND RESPECT FOR, TRIBUNALS OF JUSTICE;(5)ABUSE OF JUDICIAL AUTHORITY AND/OR POWER;(6) EXTENDED FAVORITISM TO THE DEFENDANTS; (7) CASES WERE NOT DECIDED IN SAID COURT ACCORDING TO THEIR MERIT; (8) CONDUCT FILLED WITH PARTIALITY AND FAVORITISM;AMONG OTHERTHINGS.

DUFFY P.2 ORDER 6/25/74 "THIS CASE IS RELATED TO TWO OTHER CASES", I CHARGE THEY ARE RELATED BY THE OBSTRUCTION OF JUSTICE BY THE REPUBLICAN PARTY ,COURT OFFICIALS ,AND OTHERS AND AS A RESULT OF THIS RELATION SHOULD BE TRANSFERRED TO JUDGE SIRICA WHO HAS DEALT EFFECTIVELY WITH "CORRUPTION IN HIGH PLACES". WHEREBY,THIS CASE SHOULD BE ASSIGNED TO ANOTHER CIRCUIT, PREFERABLY WASHINGTON.D.C. AND IF POSSIBLE TO JUDGE SIRICA. A FAIR TRIAL IN THIS U.S.D.C.-S.D.N.Y. IS NEAR IMPOSSIBLE AS COURT OFFICAILS ADMIT THAT KREAGER'S CASES ARE THE "MOST TALKED ABOUT CASES IN THE COURT". MR. KREAGER IS ENTITLED BY LAW FOR THE ISSUES AND FACTS TO BE HEARD ON THE MERITS AND CLEARLY, IN TWO INSTANCES, DUFFY,J. HAS BOWED OVER BACKWARDS TO OBSTRUCT THE MERITS AND FACTS FROM BEING TRIED.

CONCLUSION

IT IS RESPECTFULLY URGED THAT THE ORDER OF THE DISTRICT COURT OF JUNE 25, 1974 BE REVERSED; AND THE RELIEF REQUESTED IN EACH OF THE INDIVIDUAL POINTS AND AUTHORITIES BE GRANTED.

RESPECTFULLY SUBMITTED,

James Scott Kreager

JAMES SCOTT KREAGER
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TEL.: (212) 683-5446

DATED: NEW YORK, NEW YORK
September ~~AUGUST~~ 3, 1974

AFFIDAVIT OF SERVICE

JAMES SCOTT KREAGER, BEING DULY SWORN, DEPOSES AND SAYS:

THAT ON THE 3rd DAY OF SEPTEMBER,1974 HE SERVED A TRUE COPY OF THE ATTACHED BRIEF OF APPELLANT IN DOCKET NO. 74-1886 IN THE MATTER OF MERCU-RAY INDUSTRIES, INC. NAD JAMES SCOTT KREAGER, PLAINTIFFS, JAMES SCOTT KREAGER, APPELLANT, AGAINST BRISTOL -MYERS COMPANY, CLAIROL, INC. AND MICHEL S. SCHWARTZ. DEFENDANT- APPELLEES BY PERSONAL SERVICE UPON THE ATTORNEY FOR BRISTOL MYERS COMPANY AND CLAIROL, INC. NAMELY WEIL, LEE & BERGIN,ESQS. AT 60 EAST 42nd STREET, NEW YORK, NEW YORK AND BY LEAVING A COPY OF SAME AT 432 PARK AVENUE SOUTH AT THE OFFICES OR MAILING ADDRESS OF DEFENDANT-APPELLEE MICHEL S. SCHWARTZ.

James Scott Kreager

JAMES SCOTT KREAGER
APPELLANT PRO SE

SWORN TO BEFOE ME THIS
3rd DAY OF SEPTEMBER,1974.

Joseph J. Bambace

JOSEPH J. BAMBACE
Notary Public, State of New York
No. 31-5165895
Qualified in New York County
Commission Expires March 30, 1976